

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

INA STEINER, DAVID STEINER, and
STEINER ASSOCIATES, LLC,

Plaintiffs,

v.

EBAY INC., *et al.*,

Defendants.

Civil Action No. 1:21-CV-11181-DPW

UNITED STATES' MOTION FOR ORDER REQUIRING SERVICE OF DISCOVERY

The United States of America (the "Government"), by and through undersigned counsel, respectfully requests that the Court order the parties to serve all discovery requests and responses on the United States.

In support of this motion, the Government states as follows:

1. On October 17, 2023, the Government moved this Court for a protective order to ensure that certain information implicating the national security of the United States is not disclosed in this litigation. ECF No. 273. Among other things, the Government's requested protective order would have given the Government the ability to review certain pleadings or other documents that might implicate protected information, as defined in the protective order. ECF No. 273-1 ¶ 5.

2. On January 5, 2024, the Court issued a protective order; however, that protective order did not include the section permitting the Government to review certain pleadings and other documents. ECF No. 315. Therefore, as of this time, the Government does not have a right to access any discovery requests or responses either before or after they are served on the parties to this matter.

3. The Government now seeks an order requiring all parties to serve all presently outstanding and also forthcoming discovery requests and responses, including any documents produced in response to those requests, on the Government pursuant to Federal Rule of Civil Procedure 5. Good cause exists for this relief. As the Government has previously explained, it “cannot describe the specific contours of the information it must protect in this litigation without revealing classified information in the process.” ECF No. 304 at 8. The reasons for this are set forth in detail in the *ex parte, in camera* filing the Court has now reviewed. *See* ECF No. 315 at 1. Allowing the Government to have the same notice of the discovery requests and responses as the parties to this case already have under Rule 5 would at least permit the Government to identify any requests that are likely to elicit classified information and to take prompt action to address any productions that do in fact contain such information that even the parties, themselves, may not be aware of.

4. Additionally, the Government has identified certain information produced to it in responses to the initial discovery this Court ordered, *see* ECF Nos. 306, 315, that includes protected information. The Government has objected to the disclosure of that information, ECF No. 342, and continues to review documents produced in response to those initial requests, *see* ECF No. 343. There is therefore reason to believe that the parties in this matter may possess additional protected information that could plausibly be disclosed in discovery in this matter.

5. Pursuant to Local Rule 7.1(a)(2), undersigned counsel sought all other parties’ positions on this motion. Defendants Baugh, Cooke, eBay, Harville, Popp, Progressive F.O.R.C.E. Concepts, LLC, Stockwell, Wymer, and Zea do not oppose the relief sought by this motion. Defendant Jones takes no position, and Defendant Wenig opposes the relief. Defendant Gilbert did not provide a position. Plaintiffs stated that they “object only to the extent that we are

preserving our initial objection to the DOJ becoming involved in our discovery process, for the reasons we set forth in our opposition to your motion for a protective order.”

WHEREFORE the Government respectfully requests that the Court order that all parties to this matter serve all discovery requests and responses on the Government. A proposed order is attached.

Dated: February 9, 2024

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
Civil Division

BRIGHAM J. BOWEN
Assistant Director

/s/Christopher D. Edelman
CHRISTOPHER D. EDELMAN
(D.C. Bar No. 1033486)
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20005
Tel: (202) 305-8659
Fax: (202) 616-8460
Email: christopher.edelman@usdoj.gov

Counsel for the United States of America